



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0926]

RIN 1625-AA00

Safety Zone; Electrical Cable Installation, Menominee River, Menominee, MI and Marinette, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within 100 yards of a work site pulling new overhead electrical cables along a line crossing the Menominee River in Menominee, MI. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the installation of overhead electrical cables across the river. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan (COTP).

DATES: This rule is effective from 7 a.m. on December 12, 2019, through 10 p.m. on December 21, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0926 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Petty Officer Kyle Weitzell, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7148, email Kyle.W.Weitzell@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the COTP was made aware of this project to install new overhead electrical cables on November 19, 2019 and immediate action is needed to mitigate potential safety hazards associated with the process of pulling the new cables across the Menominee River. It is impracticable to publish an NPRM because we must establish this safety zone by December 12, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to mitigate potential

safety hazards associated with the process of pulling the new cables across the Menominee River.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential safety hazards associated with process of pulling the new cables across the Menominee River scheduled to take place on one day from December 12, 2019 through December 21, 2019, will be a safety concern for anyone within 100 yards from a work site involving the installation of new overhead electrical cables across the Menominee River between Menominee, MI and Marinette, WI. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while lines and electrical cables are being pulled across the river.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on December 12, 2019 through 10 p.m. on December 21, 2019. The safety zone will cover all navigable waters of the Menominee River within 100 yards of a work site pulling new overhead electrical cables along a line crossing the river from coordinates 45.096326°N, 087.602092°W to 45.097197°N, 087.600601°W. This safety zone is intended to be enforced on one day during the aforementioned timeframe, dependent on weather conditions. The date and time of the enforcement period will be announced by the COTP by Broadcast Notice to Mariners. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while lines and electrical cables are being pulled across the river. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP or a designated on-scene representative. The COTP or a designated on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the characteristics of the safety zone. The safety zone created by this rule will be relatively small and is designed to minimize its impact on navigable waters. This rule will prohibit entry into certain navigable waters of the Menominee River at Menominee, MI and Marinette, WI and is not anticipated to exceed twelve hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the COTP.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01,

Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone not anticipated to last more than twelve hours that will prohibit entry within 100 yards of a work site crossing the Menominee River for the pulling of new overhead electrical cables across the river. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination will be available in the docket where indicated under **ADDRESSES** once it has been completed.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T09-0926 to read as follows:

§ 165.T09-0926 Safety Zone; Electrical Cable Installation, Menominee River, Menominee, MI and Marinette, WI.

(a) Location. All navigable waters of the Menominee River within 100 yards of a line crossing the river from coordinates 45.096326°N, 087.602092°W to 45.097197°N, 087.600601°W.

(b) Enforcement period. The regulated area described in paragraph (a) is effective from 7 a.m. on December 12, 2019 through 10 p.m. on December 21, 2019 while lines and cables are being pulled across the river. The Captain of the Port Lake Michigan (COTP) will announce specific enforcement periods for this safety zone by Broadcast Notice to Mariners.

(c) Regulations. (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated on-scene representative .

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated on-scene representative.

(3) The “on-scene representative” of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene

representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: December 2, 2019.

T. J. STUHLREYER,
CAPTAIN, U.S. Coast Guard,
Captain of the Port Lake Michigan.
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